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No. 08-315

Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES

WILMA CLARK ,

Petitioner,

vs.

NEW YORK CITY TRANSIT AUTHORITY,
SUBWAY-SURFACE SUPERVISORS ASSOC.

Respondents.

On Petition For A Writ Of Certiorari
To New York Supreme Court, Appellate
Division, First Department

REHEARING
PETITION FOR A WRIT OF CERTIORARI

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REHEARING WRIT OF CERTIORARI

James Madison wrote in The Federalist Papers, "If men were angels, no government would be necessary." If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself.

STATEMENT OF THE CASE

The Petitioner appealed from order entered in the State Supreme Court granting the Respondents their cross-motion to dismiss res judicata at preliminary hearing June 24, 2006, and allowed the Respondents' false claim that the Petitioner filed a proceeding for an Article 78. That which the Petitioner filed was not an Article 78, but a complaint for discrimination, retaliations, depriveation, misrepresentation\ fraud, altering of contract, withholding health benefits, falsehoods and damages she filed within the laws for the United States Constitution and Civil Rights. January 4, 2005 Respondents withheld hearing required for such Civil Service employee as per State legislated laws not withstanding also the new diminished procedures, wherein the Respondents denied property interest. The Respondents did this as they calculated

threat to the petitioner's pension and unknown to her the Respondents authority to diminish her pension, they concurred on their presentation as intended to make misrepresentations for withhold hearing, knowing they had no control, the Petitioner subsequently learned. Their unlawful actions were discriminatory motivated, retaliatory and moved upon to obstruct legal rights and to withhold employment on false accusation of a hearsay phone call and inapplicable to discharge, she was wrongful termination causing damages. An application in prior court on October 28, 2004 went unanswered to question of rights in state legislated property interest being interfered with on new procedure having arbitration hearing being final and binding. And the Respondents told the court, it was without jurisdiction to arbitration, thereat court convened November 24, 2004 and respondents submitted their order to dismiss.

THE CONSTITUTION & ARTICLE VI

The State Court instant order June 27, 2006 and the appeals made to the higher Court improperly dismissed the Petitioner's complaint, res judicata while ignoring Constitution rights that Federal Civil Rights Laws do not recognize local practices as Article 78, proceedings as a foreclosure to such laws pursuant to the Constitution, as also are supported by Article VI, and the Judges in every State shall be bound thereby the Supremacy Clause for the substantive laws constitutionally provided.

DUE PROCESS & SUBSTANTIVE LAWS

On authorities, the State Courts have assailed and is in conflict with the clauses of the Amendment XIV, sec. 1 is applicable to all persons. Where a public employee is found to have a property interest in continued employment, the Fourteenth Amendment's due process clause forbids discharge absent a pre-termination hearing. O'Neill v. City of Auburn, 23 F.3d 685, 688 (2d Cir. 1994); Dwyer v. Regan, 777 F.2d 825, 831 (2d Cir.1985). Todaro v. Norat, 112 F.3d 598, 1997 WL 219423, *1 (2d Cir.1997); "[t]his circuit looks to New York Civil Service Law and the Statutes which create a particular position . . . to determine whether a New York public employee has a property interest . . . requiring that he be afforded a hearing before termination." "Minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action; Vitek V. Jones, 445 U.S. 480, 491 (1980). . . . Because the entitlement arose from a state statute, the legislature had the prerogative to define the procedures to be followed to protect that entitlement.; Logan v. Zimmerman Brush Co., 455 U.S. 422, 432 (1982). The Court elaborated in Loudermill:

"The point is straightforward: The Due Process provides that certain substantive rights—life, liberty and property—cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would

be reduced to a mere tautology." And the Appellate in decision, December 18, 2007, poses a post Article 78, as remedy for the failure to accord the Petitioner property rights in her position is rejected as advised by the Supreme Court in Loudermill, 105 S.Ct. at 1492-93; Logan v. Zimmerman Brush Co., 455 U.S. 422, 432, 102 S.Ct. 1148, 1155, 71 L.Ed.2d 265; and Vitek v. Jones, 445 U.S. 480, 491, 100 S.Ct. 1254, 1262, 63 L.Ed.2d 552

THE REHEARING SHOULD BE GRANTED

It is well settled that New York courts do not bar an action seeking damages for a violation of civil rights based on a prior action brought pursuant Article 78. See also Antonen v. Ward, 943 F.2d 198 (2d Cir. 1991); and neither arbitration,— Farooq v. NYS Office of Mental Health, 744 N.Y.S.2d 837, 838 (Sup. 2002), 192 Misc.2d 30,— citing the court in McDonald v. City of West Branch, Mich., 466 U.S. 284, 104 S.Ct. 1799, 80 L.Ed.2d 302 (1984)— under a collective bargain there is no preclusive effect, even if the arbitration had been the subject of a state court proceeding. Fayer v. Town of Middlebury, 258 F.3d 117 (2d Cir. 2001). Petitioner's Constitutional guaranteed rights have been denied where substantive property was taken without adequate procedures. Section 1983 provides for deprivation of any rights, privileges, or immunities secured by the Constitution and laws. The State Courts failed to comply with the authorities, enabling it to control the governed.

CONCLUSION

The Constitution for the United Stated and the laws thereof did so enabled the government to control the governed and provided for certain substantive rights supported by the Supremacy Clause which cannot be deprived. Where upon controlling authorities, objective to decisions in the State Courts, denying due process for Petitioner's substantial rights, a rehearing for a writ of certiorari under the circumstance should be granted.

Respectfully submitted,
Petitioner, Wilma Clark
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Phone: (718) 458-3114

Date: December 3, 2008

CERTIFICATION

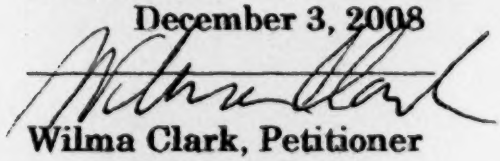
On Petition For A Writ Of Certiorari
To New York Supreme Court, Appellate
Division, First Department

REHEARING
PETITION FOR A WRIT OF CERTIORARI

The Petitioner Wilma Clark, self represented herein certifies that the petition is restricted to the grounds specified in Rule 44 paragraph 2, and that it is presented in good faith and not for delay.

Pursuant to 28 U.S.C. § 1746(1), I declare under the penalty of perjury under, the laws of the United States of America that the foregoing is true and correct.

Date: New York, New York
December 3, 2008



Wilma Clark, Petitioner
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